

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5332**

Parties to Dispute:

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS**

-and-

**NORFOLK SOUTHERN RAILWAY
COMPANY**

AWARD

Case No. 167

Claimant R. S. Cravens

STATEMENT OF CLAIM:

“Claim on behalf of Operator R. S. Cravens in Norfolk, Virginia, for reinstatement with seniority rights unimpaired and made whole for all losses sustained. These begin the date removed from service, continue to the present date and include, but are not limited to, lost wages, vacation rights, health and welfare and insurance benefits, pension benefits such as Railroad Retirement and Unemployment Insurance, and any other benefits that would have been earned during the time Operator Cravens is unjustly withheld from Carrier’s service. We also request his personal record be cleared of the matter.”

FINDINGS:

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

On September 3, 2016, Carrier charged Claimant Cravens with excessive tardiness in reporting for his assignment as a Car Dumper Operator at Lamberts Point in Norfolk, VA. Specifically, Carrier asserted that Claimant had reported late for his first shift assignment five (5) times between June 4, 2016 up to and including August 27, 2016. Following formal investigation held on January 17, 2017, by letter dated February 6, 2017, Carrier’s Division Manager of Mechanical Operations David Price informed Mr. Cravens that he was dismissed from service. When the Organization’s challenge to that action remained unresolved in claim handling it was advanced to final and binding arbitration before this Board.


According to the record developed on the property, Claimant had entered Carrier's service in October 2005. Evidence of record, including Claimant's admissions, establishes the tardiness at issue as well as prior discipline for the same problem two years earlier. The five incidents triggering this dismissal comprehended a total of 17 minutes lost time. One of the incidents implicated tardiness of 5 minutes; one 4 minutes; two were three minutes; and one was two minutes. The record reflects that Claimant's daily safety briefings started promptly at 7:00 a.m.

Failure to maintain an acceptable attendance record is always considered serious in the transportation sector and rarely tolerated. As Carrier correctly argues, unreliability has serious consequences for both the employer and the offender's fellow employees. The record transcript in this instance suggests that sufficient credible evidence was adduced to support significant discipline.

Balancing that, the Claimant, son and grandson of Norfolk southern employees, testified without contradiction that prior to being removed from service he had been going through a divorce and was struggling with substance abuse issues. Although the record suggests Claimant may not have been questioned by Carrier concerning the reasons for his lateness, it also informs the Board that he had previously entered Carrier's DARS Program on a voluntary basis to address his struggles with addiction to stimulants. It is not entirely clear whether he completed that rehabilitation, but in light of the relatively minor tardiness at issue and the Claimant's full acceptance of responsibility for his problem, the Board concludes that the discipline was excessively harsh and that leniency is appropriate. The dismissal shall be reduced to a disciplinary suspension without pay for time out of service. Claimant shall be reinstated to service contingent upon his successful completion of evaluation under Carrier's EAP Program.

A W A R D


The Claim is partially sustained in accordance with the Findings.



 Tom Owens
 Employee Member



 James E. Conway
 Chairman and Neutral Member



 Christopher Carr
 Carrier Member